IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

Crl.MC.No. 354 of 2005

ST.229/2004 of ADDL.CHIEF JUDICIAL MAGISTRATE (E & O),ERNAKULAM

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PETITIONERS:

1. M/S. DUROFLEX EXPORTS PVT.LTD.,
   P.B.NO.3808, CHUNGOM, ALLEPPEY -688 011.

2. SRI.P.CHANDY MATHEW, S/O. LATE P.C.MATHEW,
   1, NO.74, BENSON CROSS ROAD,BENSON
   TOWN, BANGALORE 560 046, KARNATAKA.

3. SRI.GEORGE L.MATHEW, PALLIVATHUCKAL
   HOUSE, CHUNGOM, MULLACKAL POST,
   ALLEPPEY 688 011.

4. SRI.SHAJI JOSEPH, S/O. M.J.JOSEPH,
   NO.1056 L.N.LAYOUT, KARIYANNAPALAYA
   LINGARAJAPURAM, BANGALORE 560 084.

BY ADV. SRI.JOSEPH MARKOSE (SR.)
SRI.MITHUN MARKOS

RESPONDENTS:

1. ASST.REGISTRAR OF COMPANIES
   KERALA, ERNAKULAM.

2. STATE OF KERALA, REPRESENTED BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY SRI.P.PARAMESWARAN NAIR, ASG

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.M.C.No. 354 of 2005

ORDER

Petitioners are accused in S.T.No.229/04 on the file of the Additional Chief Judicial Magistrate's Court (Economic Offences), Ernakulam, a complaint filed by the first respondent, complaining of commission by the petitioners of an offence punishable under Section 383A(1) of the Companies Act, 1956 (hereinafter referred to as 'the Act').

2. Annexure-A is the said complaint. The first petitioner is a private limited company. The second petitioner was the former Director of the company and petitioners 3 and 4 are the present Directors of the company.

3. Annexure-A complaint is filed by the respondent against the petitioners complaining of commission by them of an offence punishable under Section 383A(1) of the Act and that was filed on 3.8.2004. The allegation is that the company, which is having a paid up capital of more than

Rupees fifty lakhs, has not appointed a Company Secretary as mandated by Section 383A(1) of the Act. It is not in dispute that the paid up share capital prescribed as per the Rules as it then stood was Rupees fifty lakhs, which, however, was later amended to Rupees two crores, vide notification dated 11.6.2002.

4. The prayer in this Crl.M.C. is to quash Annexure-A complaint, on the basis of which is S.T. No.229/04 registered on the file of the Additional Chief Judical Magistrate's Court (Economic Offences), Ernakulam.

5. It is vehemently contended before me by the learned counsel for the petitioners that non appointment of a Secretary was detected in the inspection conducted by the first respondent on 24.8.2001, but that, the complaint is filed only as late as on 3.8.2004 and therefore, by reason of Section 468(1) of the Cr.P.C., the court below should not have taken cognizance of the offence, as

the period of limitation prescribed by Section 468 (2)(a) of the Code is only six months, as the offence is punishable with fine only .

6. The learned Assistant Solicitor General contends that the offence is a continuing one and therefore, limitation does not apply, so as to bar the proceedings. According to him, in all such cases, when the offence continues, complaint can be filed at any time, irrespective of the limitation prescribed under Section 468 of the Cr.P.C. However, in the instant case, when the Rule was amended vide notification dated 11.6.2002, raising the amount of Rupees fifty lakhs to Rupees two crores as the paid up capital for companies to have a whole time Secretary appointed under Section 383A (1) of the Act, the offence ceases to be an offence any longer with effect from the said notified date, namely, 11.6.2002, as it is not the case of the first respondent that the paid up capital of the first petitioner company is above Rupees two

crores. Hence, even in that event, a complaint should have been filed within six months, immediately preceding the date of notification dated 11.6.2002, whereby the amount of Rupees fifty lakhs prescribed as the paid up capital, which necessitates appointment of a whole time Secretary, was raised to Rupees two crores. In the instant case, the complaint was filed only on 3.8.2004. More than two years have elapsed after the issuance of the notification raising the amount of Rupees fifty lakhs to Rupees two crores. Hence, six months' time prescribed by Section 468(2)(c) of the Cr.P.C. has expired and by reason of Section 468(1) of the Cr.P.C., the Additional Chief Judicial Magistrate should not have taken cognizance of the offence. Hence, allowing the proceedings in the court below to be continued will only be an abuse of the process of court. This Crl.M.C., therefore, deserves to be allowed quashing the proceedings in S.T.No.229/04, registered on the basis of Annexure-

A complaint.

In the result, allowing this Crl.M.C. I quash the proceedings as against the petitioners in S.T. No.229/04 on the file of the Additional Chief Judicial Magistrate's Court (Economic Offences), Ernakulam, registered on the basis of Annexure-A complaint.

19th December, 2007 (K.P.Balachandran, Judge)

tkv